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ABSENT DEFENDANTS, SERVICE ON.

1. Under section 56 of the Oregon Code referred to in the opinion of the court as in force in the District of Alaska, when an affidavit shows that the defendant is a non-resident of the district, and that personal service cannot be made upon him, and the marshal or other public officer to whom the summons was delivered returns it with his indorsement that after due and diligent search he cannot find the defendant, such proof is sufficient to give jurisdiction to the court or judge to decide the question of foreclosure of a mortgage on real estate of the defendant situated in that district. *Marx* v. *Ebner*, 314.
2. In such a case facts must appear from which it will be a just and reasonable inference that the defendant could not, after due diligence, be found, and that due diligence has been exercised; and such an inference is reasonable when proof is made that the defendant is a non-resident of the State, Territory or District, and there is an affidavit that personal service cannot be made upon him within its borders and there is a certificate of the marshal to the effect of the one which appears in this case. *Ib.*

ADMIRALTY.

1. A stipulation in a bill of lading that all claims against a steamship company, or any of the stockholders of the company, for damage to merchandise, must be presented to the company within thirty days from the date of the bill of lading, applies, though the suit be *in rem*, against the steamship carrying the property covered by the bill of lading. *Queen of the Pacific*, 49.
2. In view of the facts that the loss occurred the day after the bill of lading was signed, and the shippers were notified of such loss within three days thereafter, the stipulation was a reasonable one, and a failure to present the claim within the time limited was held a bar to recovery against the company *in personam* or against the ship *in rem*. *Ib.*
3. The reasonableness of such notice depends upon the length of the voyage, the time at which the loss occurred, and all the other circumstances of the case. *Ib.*

ATTACHMENT.

See ILLINOIS, LOCAL LAW OF.

ATTORNEY AT LAW.

See CLAIMS AGAINST THE UNITED STATES, 3.

CASES AFFIRMED OR FOLLOWED.

1. These cases do not differ materially from the one just decided, (*ante*, 1), except as to the year for which the taxes were assessed. *Yazoo & Mississippi Valley Railroad Co.* v. *Adams*, 26.
2. The decision in this case follows that in No. 387, *ante* 109. *Neeley* v. *Henkel* (*No. 2*), 126.
3. *Hewitt* v. *Schultz*, *ante*, 139, followed in regard to the construction of the act of July 2, 1864, c. 217, to be observed in the administration of the grant of public lands to the Northern Pacific Railroad Company. *Moore* v. *Cormode*, 167.
4. *Hewitt* v. *Schultz*, *ante*, 139, again followed. *Moore* v. *Stone*, 180.
5. *Blackburn* v. *Portland Gold Mining Company*, 175 U. S. 571, and *Shoshone Mining Company* v. *Rutter*, 177 U. S. 505, affirmed and applied. *Mountain View Mining & Milling Co.* v. *McFadden*, 533.
6. The judgment below is affirmed on the authority of *Freeport Water Co.* v. *Freeport City*, *ante*, 587. *Danville Water Company* v. *Danville City*, 619.
7. So far as the contentions in this case are the same as those passed upon in *Freeport Water Company* v. *Freeport City*, *ante*, 587, and in *Danville Water Company* v. *Danville City*, *ante*, 619, they are governed by those cases. *Rogers Park Water Company* v. *Fergus*, 624.

See EJECTMENT, 4.
NATIONAL BANK, 4.

CHINESE RESIDENTS IN THE UNITED STATES.

1. Li Sing was a Chinaman who, after residing for years in the United States, returned temporarily to China, taking with him a certificate purporting to have been issued by the imperial government of China, at its consulate in New York, and signed by its consul, stating that he was permitted to return to the United States, that he was entitled to do so, and that he was a wholesale grocer. On his return to the United States by way of Canada, he presented this certificate to the United States Collector of Customs at Malone, New York, who cancelled it and permitted him to enter the country. Subsequently he was brought before the Commissioner of the United States for the Southern District of New York, charged with having unlawfully entered the United States, being a laborer. At the examination he set up that he had a right to remain here, and that he was a merchant. The Commissioner found that, on his departure from the United States, he was and had long been a laborer, and ordered his deportation. *Held*, that the decision of the Collector at Malone was not final, and that by the act of October 1, 1888, c. 1064, the certificate issued to him by the Chinese consul on his departure from the United States was annulled. *Li Sing* v. *United States*, 486.
2. *Fong Yue Ting* v. *United States*, 149 U. S. 698, affirmed and followed, especially to the points: (1) That the provision of the statute which puts the burden of proof upon the alien of rebutting the presumption arising from his having no certificate, as well as the requirement of

proof "by at least one credible white witness, that he was a resident of the United States at the time of the passage of the act," is within the acknowledged power of every legislature to prescribe the evidence which shall be received, and the effect of that evidence in the courts of its own government; (2) that the requirement not allowing the fact of residence here at the time of the passage of the act to be proved solely by the testimony of aliens in a like situation was a constitutional provision; and (3) that the question whether, and upon what conditions these aliens shall be permitted to remain within the United States, being one to be determined by the political departments of the Government, the judicial department cannot properly express an opinion upon the wisdom, the policy, or the justice of the measures enacted by Congress in the exercise of the powers confided to it by the Constitution over this subject. *Ib.*

CLAIMS AGAINST THE UNITED STATES.

1. It is entirely plain that there was no fraud in this case, and therefore this ground for the complainant's relief cannot be sustained. *United States* v. *Beebe*, 343.
2. A District Attorney of the United States has no power to agree upon a compromise of a claim of the United States in suit, except under circumstances not presented in this case. *Ib.*
3. An attorney, by virtue of his general retainer only, has no power to compromise his client's claim; and a judgment entered on a compromise made under such circumstances, is subject to be set aside on the ground of the lack of authority in the attorney to make the compromise on which the judgment rests. *Ib.*
4. Generally speaking the laches of officers of the Government cannot be set up as a defence to a claim made by the Government. *Ib.*
5. When an agent has acted without authority, and it is claimed that the principal has thereafter ratified his act, such ratification can only be based upon a full knowledge of all the facts upon which the unauthorized action was taken. *Ib.*

CONSTITUTIONAL LAW.

1. The statute of Massachusetts of 1887, c. 435, by which "Whoever has been twice convicted of crime, sentenced and committed to prison, in this or any other State, or once in this and once at least in any other State, for terms of not less than three years each, shall, upon conviction of a felony committed in this State after the passage of this act, be deemed to be an habitual criminal, and shall be punished by imprisonment in the State prison for twenty-five years," is constitutional. *McDonald* v. *Massachusetts*, 311.
2. The act of Congress authorizing Circuit Courts to appoint commissioners is constitutional. *Rice* v. *Ames*, 371.
3. The decisions of the highest court of a State upon the question whether a particular act was passed in such manner as to become, under the

state constitution, a law, should be accepted and followed by the Federal courts. *Wilkes County* v. *Coler*, 506.

See JURISDICTION, A, 5;
RAILROAD.

CONTRACT.

There is no complaint in this case that the rates fixed by the ordinance of 1897, passed by the city council of Chicago, were unreasonable; and as the plaintiff in error relies strictly on a contractual right, and as it has no such right, the judgment below is affirmed. *Rogers Park Water Company* v. *Fergus*, 624.

See ADMIRALTY, 1.

CORPORATION.

1. The Mississippi constitution of 1890 provided that every new "grant of corporate franchises" should be subject to the provisions of the constitution. Where several railroads were consolidated, subsequent to the adoption of this constitution, by a contract, under which the constituent companies were to go out of existence, their officers to resign their trusts in favor of officers of the new company, their boards of directors supplanted by another board, the stock of the constituent companies to be surrendered and new stock taken therefor, or, in lieu of that, that the old stock should be recognized as the stock of the new company, and that the road should be operated by men holding their commissions from the new company, it was *held* that a new grant of corporate franchises had been made, and the consolidated company was subject to the new constitution. *Yazoo & Mississippi Valley Railway Co.* v. *Adams*, 1.

2. Where two companies agree together to consolidate their stock, issue new certificates, take a new name, elect a new board of directors, and the constituent companies are to cease their functions, a new corporation is thereby formed subject to existing laws. *Ib.*

3. For the purpose of procuring a decree enjoining a corporation from acting as such on the ground of the nullity of its organization, it is not necessary that the individual corporators or officers of the company be made defendants, and process be served upon them as such; but, the State by which the corporate authority was granted is the proper party to bring such an action through its proper officer, and it is well brought when brought against the corporation alone. *New Orleans Debenture Redemption Co.* v. *Louisiana*, 320.

4. The State has the right to determine, through its courts, whether the conditions upon which a charter was granted to a corporation have been complied with. *Ib.*

CRIMINAL LAW.

1. Bird was indicted for murder. The killing was admitted, but it was claimed to have been done in self-defence. At the trial a government witness testified "that in the month of August, when the defendant,

in company with the deceased Hurlin, R. L. Patterson, Naomi Strong and witness, were going up the Yukon River in a steam launch, towing a barge loaded with their provisions, Hurlin was steering; that the defendant was very disagreeable to all the other persons; that when they would run into a sand bar he would curse them; he would say: 'The Dutch sons of bitches don't know where to run it.' On one occasion they were getting wood on the bank of the river, and Bird got out and wanted to hit Patterson. Witness didn't remember exactly what was said, but defendant called Patterson a 'son of a bitch,' and told him he would 'hammer the devil out of him,' and witness and the others would not let them fight. And if anything would go wrong, he, defendant, would not curse in front of witness and the others' faces, but defendant would be disagreeable all the way along, and would make things very disagreeable." This evidence was excepted to and the court *held* that its only doubt was whether the evidence, though improperly admitted, was of sufficient importance to call for a reversal of the judgment, but it sustained the exception. Afterwards the Government, to maintain the issues on its part, offered the following testimony of the witness Scheffler: That in the latter part of March, 1899, after Patterson had been carried to Anvik, Bird made a trip up the river and came back with a man by the name of Smith; that Smith left and the next day after that Bird was very disagreeable and tried to pick a fight with the woman, Naomi Strong; he acted very funny, you had to watch him and be careful. He got awful good after that and everything was just so. It was "Charles this," and "Naomi this." To which testimony defendant excepted, and the exception was sustained. *Bird* v. *United States*, 356.

2. The court at the request of the Government instructed the jury that "if they believed from the evidence beyond a reasonable doubt that the defendant Bird, on the 27th day of September, 1898, at a point on the Yukon River about two miles below the coal mine known as Camp Dewey, and about 85 miles above Anvik, and within the District of Alaska, shot and killed one J. H. Hurlin, and that said killing was malicious, premeditated, and willful, and that said killing was not in the necessary defence of the defendant's life or to prevent the infliction upon him of great bodily harm, then it is your duty to find the defendant guilty as charged in the indictment." *Held* that this was substantial error. *Ib.*

CUBA.

1. There is no merit in the contention that Article 401 of the Penal Code of Cuba, which provides that the public employé, who, by reason of his office, has in his charge public funds or property, and takes or consents that others should take any part therefrom, shall be punished, applies only to persons in the public employ of Spain. Spain, having withdrawn from the island, its successor has become "the public," to which the code, remaining unrepealed, now refers. *Neeley* v. *Henkel* (*No. 1*), 109.

2. Within the meaning of the act of June 6, 1900, c. 793, 31 Stat. 656, pro-

viding for the surrender of persons committing defined crimes within a foreign country occupied by or under the control of the United States, and fleeing to the United States, or any Territory thereof, or the District of Columbia, Cuba is foreign territory which cannot be regarded in any constitutional, legal or international sense, as a part of the territory of the United States; and this is not affected by the fact that it is under a Military Governor, appointed by and representing the President in the work of assisting the inhabitants of the island in establishing a government of their own. *Ib.*

3. As between the United States and Cuba that island is territory held in trust for its inhabitants, to whom it rightfully belongs, and to whose exclusive control it will be surrendered when a stable government shall have been established by their voluntary action. *Ib.*
4. The act of June 6, 1900, is not unconstitutional in that it does not secure to the accused when surrendered to a foreign country for trial all the rights, privileges and immunities that are guaranteed by the Constitution to persons charged with the commission in this country of crime against the United States. *Ib.*
5. The provisions in the Constitution relating to writs of *habeas corpus*, bills of attainder, *ex post facto* laws, trial by jury for crimes and generally to the fundamental guarantees of life, liberty and property embodied in that instrument have no relation to crimes committed without the jurisdiction of the United States, against the laws of a foreign country. *Ib.*
6. When an American citizen commits a crime in a foreign country, he cannot complain if required to submit to such modes of trial and to such punishment as the laws of that country may prescribe for its own people, unless a different mode be provided for by treaty stipulations between that country and the United States. *Ib.*
7. The contention that the United States recognized the existence of an established government, known as the Republic of Cuba, but is now using its military or executive power to overthrow it, is without merit. *Ib.*
8. The act of June 6, 1900, is not in violation of the Constitution of the United States, and this case comes within its provisions; and, the court below having found that there was probable cause to believe the appellant guilty of the offences charged, the order for his extradition was proper, and no ground existed for his discharge on *habeas corpus*. *Ib.*

DISTRICT ATTORNEY.

See CLAIMS AGAINST THE UNITED STATES, 2.

DISTRICT OF COLUMBIA.

The testator of the defendants in error commenced in his lifetime an action against the District of Columbia for trespasses on land of his in the District. The alleged trespasses consisted in entering on the land and digging up and removing, under claim of right, a quantity of gravel to be used for repairing and constructing public highways. The testator died before the action was brought to trial. His executors brought it to trial and secured a verdict and judgment in their behalf, which was

sustained by the Court of Appeals of the District. The issues involved are stated fully by the court in its opinion here, on which statement it is *held:* (1) That as there was no evidence of a formal grant, and as the District relied upon an alleged dedication of the trust to the uses to which the District put it, the issue was properly submitted to the jury; (2) that the Court did not err in holding and instructing the jury that the use of the tract by the public must have been adverse to the owner of the fee; (3) that there was no error in holding and instructing the jury that the prescriptive right of highway was confined to the width as actually and without any intermission used for the period of twenty years; (4) that there was no error in so instructing the jury as to deprive the District of a legal presumption that the public acts required to be performed by it in order to give the right claimed had been performed; (5) that there was no error in leaving to the jury the question whether the District of Columbia had done the acts constituting the trespass, without the execution of its lawful powers according to law; (6) that there was no error in submitting to the jury the question whether the gravel was obtained incident to the lawful exercise of the power to grade; (7) that there was no error in sustaining the twelfth prayer of the defendants in error, and thereby submitting to the jury to find and determine both the law and facts of the case; and also thereby holding that if the jury found any one of the facts enumerated in said prayer without regard to its probative force, it would tend to prove that Harewood road was not a public way, and rebut any presumption that it was a public highway; (8) that there was no error in refusing the twenty-third prayer of the District; (9) that the Court properly instructed the jury that they might enhance the damages that would make the claimants whole, by any sum not greater than the interest on such account from the time of the filing of the original declaration. *District of Columbia* v. *Robinson*, 92.

See EJECTMENT, 4.

EJECTMENT.

1. When, in an action of ejectment, the plaintiff proves that on a day named he was in the actual, undisturbed and quiet possession of the premises, and the defendant thereupon entered and ousted him, the plaintiff has proved a *prima facie* case, the presumption of title arises from the possession, and, unless the defendant prove a better title, he must himself be ousted. *Bradshaw* v. *Ashley*, 59.
2. Although the defendant proves that some third person, with whom he in no manner connects himself, has title, this does him no good, because the prior possession of the plaintiff is sufficient to authorize him to maintain the action against a trespasser; and the defendant being himself without title, and not connecting himself with any title, cannot justify an ouster of the plaintiff. *Ib.*
3. In *Sabariego* v. *Maverick*, 124 U. S. 261, the latest case in this court on the subject, the rule is stated to be that a person who is in possession of premises under color of right, which possession had been continuous

and not abandoned, gave thereby sufficient proof of title as against an intruder or wrongdoer, who entered without right. *Ib.*

4. That case expresses the true rule prevailing in the District of Columbia, as well as elsewhere. *Ib.*

EQUITY.

1. This is a case in which a court of equity is called upon to decide upon which of two innocent parties is to fall a loss occasioned by the dishonesty of a third person. On the facts as stated by the court, it appears that the relation that existed between Thompson, the executor of Dr. Saul who left a legacy to the Missionary Society, and the Society, was that of executor and legatee; that the relation between Thompson and Holly, the purchaser of the estate sold by the executor, was that of attorney and client; and that as between themselves, Holly and the Society were absolute strangers. The court, on the facts, holds that the pleadings and evidence fail to show any such dereliction of duty or supine negligence on the part of the Missionary Society in demanding and enforcing payment of the Saul legacy as would show, or even tend to show, that the Society knew, or had reason to believe, that Thompson was insolvent, or had been guilty of any misappropriation of the property or funds of the Saul estate; also that the evidence fairly showed that the Missionary Society had appropriated the money received by it to the purposes appointed by the testator, before any notice was given of the testator's claim. *Holly* v. *Missionary Society of the Protestant Episcopal Church*, 284.
2. As against the Missionary Society Holly has no equities; and even if it could be said that the equities were equal, a court of equity will not transfer a loss that has already fallen upon one innocent party to another party equally innocent. *Ib.*

EVIDENCE.

See CRIMINAL LAW, 1, 2.
WILL.

EXTRADITION.

1. A complaint before a commissioner in a foreign extradition case, if made solely upon information and belief, is bad; but it need not be made upon the personal knowledge of the complainant, if he annex to such complaint a copy of the indictment found in the foreign country, or the deposition of a witness having personal knowledge of the facts, taken under the statute. *Rice* v. *Ames*, 371.
2. Where the first count of a complaint charged the offence solely upon information and belief, and the subsequent counts purported on their face to aver offences within the personal knowledge of complainant, it was held that the insufficiency of the first count did not impair the sufficiency of the others, and that the complaint vested jurisdiction in the commissioner to issue his warrant. *Ib.*
3. Continuances of the examination may be granted in the discretion of the

commissioner, and, in this particular, he is not controlled by a state statute limiting such continuances to ten days. *Ib.*

FEDERAL QUESTION.

1. An action was begun in a state court for taxes. Defendants pleaded in bar, but did not set up a Federal question. The case resulted in a judgment for a part of the taxes; was carried to the Supreme Court which passed upon all the issues, reversed the judgment, and practically held that defendants were liable for all the taxes, and remanded the case for a new trial. Defendants then set up a Federal question, which the court upon the new trial refused to consider, and the Supreme Court affirmed its action. *Held* that the Federal question was "specially set up and claimed" too late to be available as a defence. *Yazoo & Mississippi Valley Railway Co.* v. *Adams*, 1.
2. As it appeared from the record in this case and the opinion of the court, that the defendants relied upon certain charter rights, which they insisted had been impaired by subsequent legislative action; and the Supreme Court held that no such rights existed, it was *held* that it sufficiently appeared that there was a Federal question necessarily involved in the case, and not only must have been, but actually was, passed upon by the Supreme Court. *Ib.*
3. It is only cases arising under the third clause of Rev. Stat. sec. 709, where a Federal right, title, privilege or immunity is claimed, that the question must be specially set up. Under the second clause it is sufficient, if the validity of a state statute or authority is necessarily involved in the disposition of the case. *Ib.*

See JURISDICTION, A.

HABEAS CORPUS.

1. The principle reaffirmed that when the petitioner is in custody by state authority for an act done or omitted to be done in pursuance of a law of the United States, or of an order, process or decree of a court or judge thereof; or where, being a subject or citizen of a foreign State, and domiciled therein, he is in custody, under like authority, for an act done or omitted under an alleged right, title, authority, privilege, protection or exemption claimed under the commission, or order, or sanction of any foreign State, or under color thereof, the validity and effect whereof depend upon the law of nations; in such and like cases of urgency, involving the authority and operations of the General Government, or the obligations of this country to, or its relations with, foreign nations, the courts of the United States have frequently interposed by writs of *habeas corpus* and discharged prisoners who were held in custody under state authority; so, also, when they are in the custody of a state officer, it may be necessary, by use of the writ, to bring them into a court of the United States to testify as witnesses. *Minnesota* v. *Brundage*, 499.
2. But the power of the Federal court upon *habeas corpus* to discharge one held in custody by state officers or tribunals in violation of the Constitution of the United States ought not to be exercised in every case im-

mediately upon application being made for the writ. Except in cases of emergency, such as are above defined, the applicant should be required to exhaust such remedies as the State gives to test the question of the legality, under the Constitution of the United States, of his detention in custody. *Ib.*

3. The writ of *habeas corpus* cannot be made use of as a writ of error, and when applied for to relieve from restraint in punishment for contempt in the violation of orders of court, will not be issued unless the orders violated are absolutely void. *In re McKenzie, Petitioner*, 536.
4. Orders of the District Court of Alaska, second division, appointing a receiver and granting an injunction, are appealable to the Circuit Court of Appeals for the Ninth Circuit, and on refusal of the District Court to do so, the Court of Appeals may allow such appeals with supersedeas, and grant writs of supersedeas, if considered necessary. *Ib.*
5. If a Judge of the Court of Appeals allows such appeals and supersedeas, and directs the issue of writs of supersedeas, ordering among other things the restoration of the property taken possession of by the receiver, orders of the Court of Appeals approving of his action in doing so, and of the writs so issued, are not void. *Ib.*
6. Where appeals are granted and the original citation and writ of supersedeas together with certified copies of the assignments of error and of the supersedeas bond and of the orders allowing the appeal are filed in the District Court, the judgment of the Circuit Court of Appeals that this is sufficient to give effect to the appeals, is not open to review on this application. *Ib.*
7. The Circuit Court of Appeals having jurisdiction in the matter of the appeal herein involved, its decrees and orders in the premises are not void and cannot be revised on *habeas corpus*. *Ib.*

ILLINOIS, LOCAL LAW OF.

1. In Illinois the law does not permit the owner of personal property to sell it and still continue in possession of it, so as to exempt it from seizure and attachment at the suit of creditors of the vendor; and in cases of this kind the courts of the United States regard and follow the policy of the state law. *Dooley* v. *Pease*, 126.
2. Where a case is tried by the court, a jury having been waived, its findings upon questions of fact are conclusive in the courts of reviews. *Ib.*
3. Errors alleged in the findings of the court are not subject to revision by the Circuit Court of Appeals or by this court, if there was any evidence upon which such findings could be made. *Ib.*
4. Applying the settled law of Illinois to the facts as found, the conclusion reached in this case by the Circuit Court, and affirmed by the Circuit Court of Appeals, that the sale was void against the attaching creditors, must be accepted by this court. *Ib.*

INDIAN.

1. The object of the Indian Depredation Act is to enable citizens whose property has been taken or destroyed by Indians belonging to any band, tribe or nation, in amity with the United States, to recover a judgment

for their value both against the United States and the tribe to which the Indians belong, and which by the act is made responsible for the acts of marauders whom it has failed to hold in check. If the depredations have been committed by the tribe or band itself, acting in hostility to the United States, it is an act of war for which there can be no recovery under the act. *Montoya* v. *United States*, 261.

2. Where a company of Apache Indians, who were dissatisfied with their surroundings, left their reservation under the leadership of Victoria, to the number of two or three hundred, became hostile, and roamed about in Old and New Mexico for about two years, committing depredations and killing citizens, it was *held* that they constituted a "band" within the meaning of the act; that they were not in amity with the United States, and that neither the Government nor the tribe to which they originally belonged, were responsible for their depredations. *Ib.*
3. Where a band belonging to the Cheyenne Indians became dissatisfied with their reservation, separated themselves from the main body of the tribe, started northward to regain their former reservation, were pursued by the troops, were defeated in battle, became hostile and committed depredations upon citizens, it was *held* that neither the Government nor the tribe to which they had originally belonged, were responsible for the value of property taken or destroyed by them. *Conners* v. *United States*, 271.

See JURISDICTION, A, 13.

INSURANCE (FIRE).

The plaintiff in error insured the defendants in error against loss by fire by two policies, one dated in June, 1894, the other in February, 1895, each of which contained the following provision: "The assured under this policy hereby covenants and agrees to keep a set of books showing a complete record of business transacted, including all purchases and sales, both for cash and credit, together with the last inventory of said business; and further covenants and agrees to keep such books and inventory securely locked in a fireproof safe at night, and at all times when the store mentioned in the within policy is not actually open for business, or in some secure place not exposed to a fire which would destroy the house where such business is carried on; and, in case of loss, the assured agrees and covenants to produce such books and inventory, and in the event of the failure to produce the same, this policy shall be deemed null and void, and no suit or action at law shall be maintained thereon for any such loss." On the night of April 18, 1895, between the hours of one and three A. M., fire accidentally broke out in a livery stable in the town of Ardmore, which was about three hundred yards distant from the plaintiff's place of business. Efforts to arrest the progress of the conflagration failed, and when it had approached so near to the plaintiff's place of business that the windows of their store were cracking from the heat and the building was about to take fire, one of the plaintiffs entered the building for the purpose of removing the books of the firm to a safer place, thinking that it would be better to remove them than to take the chances of their being destroyed by

fire. He opened an iron safe in the store in which they had been deposited for the night, which was called a fireproof safe, and took them therefrom and to his residence some distance away. The books consisted of a ledger, a cash book, a day book or blotter, and a small paper-covered book containing an inventory that the firm had taken of their stock on or about January 1, 1895. In the hurry and confusion incident to the removal of the books, the inventory was either left in the safe and was destroyed, or was otherwise lost, and could not be produced after the fire. The other books, however, were saved, and were exhibited to the insurer after the fire and were subsequently produced as exhibits on the trial. There was neither plea nor proof that the loss of the inventory was due to fraud or bad faith on the part of the plaintiffs or either of them. An action for the amount of the loss was brought by the insured against the insurance company, on the trial of which the jury gave a verdict in the plaintiffs' favor, on which judgment was entered, which judgment was sustained by the Circuit Court of Appeals. *Held:* (1) That it was not intended by the parties that the policy should become void unless the fireproof safe was one that was absolutely sufficient against every fire that might occur; but that it was sufficient if the safe was such as was commonly used, and such as, in the judgment of prudent men in the locality of the property insured, was sufficient; (2) that if the plaintiffs had the right, under the terms of the policy, as undoubtedly they had, to remove their books and inventory from the safe to some secure place, not exposed to a fire which might destroy the building in which they carried on business, it was never contemplated that they should lose the benefit of the policies if, in so removing their books and inventory, the same were lost or destroyed, they using such care on the occasion, as a prudent man, acting in good faith, would exercise. *Liverpool and London and Globe Insurance Company* v. *Kearney*, 132.

JUDGMENT.

Whatever may be the nature of a question presented for judicial determination—whether depending on Federal, general or local law—if it be embraced by the issues made, its determination by a court having jurisdiction of the parties and of the subject-matter binds the parties and their privies so long as the judgment remains unmodified or unreversed. *Mitchell* v. *First National Bank of Chicago*, 471.

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT.

1. An appeal to this court from a Circuit Court will not be dismissed upon the ground that, after an injunction against the collection of certain taxes was refused by the Circuit Court, and while the suit was still pending in that court, defendant brought suit in the state court and recovered the taxes in question. The defence of *res adjudicata* cannot be made available upon motion to dismiss an appeal. *Illinois Central Railroad Co.* v. *Adams*, 28.
2. Jurisdiction is the right to put the wheels of justice in motion, and to

proceed to the final determination of the cause upon the pleadings and evidence. It exists in the Circuit Courts, if the plaintiff be a citizen of one State, the defendant a citizen of another, if the amount in controversy exceed $2000, and if the defendant be properly served with process within the district. *Ib.*

3. A failure to allege a compliance with the Ninety-fourth rule in equity concerning bills brought by stockholders of corporations against the corporation and other parties, does not raise a question of jurisdiction but of the authority of the plaintiff to maintain his bill. *Ib.*
4. As the bill set up a contract with the State in a railway charter, and also averred that such contract had been impaired by subsequent legislation, it was *held* that the bill presented a case under the Constitution of the United States, and that jurisdiction might be sustained upon that ground alone. *Ib.*
5. The question whether a suit, nominally against an individual by name, is in reality a suit against the State within the Eleventh Amendment to the Constitution, is a defence to the merits rather than to the jurisdiction of the court. *Ib.*
6. Such defence should be raised either by demurrer or other appropriate pleadings, and cannot be made available upon motion to dismiss. *Ib.*
7. Motions are generally appropriate only in the absence of remedies by regular pleadings, and cannot be made available to settle important questions of law, or to dispose of the merits of the case. *Ib.*
8. As the suit was against a revenue agent appointed by the State who represented all the parties interested, to enjoin the collection of a gross sum far exceeding the jurisdictional amount, the fact that such sum when collected would ultimately be distributed in small amounts to the various municipalities interested, does not defeat the jurisdiction of the court. *Ib.*
9. A writ of error to the Supreme Court of a State cannot be sustained when the only question involved is the construction of a charter or contract, although it appear that there were statutes subsequent to such charter which might have been, but were not, relied upon as raising a Federal question concerning the construction of the contract. If the sole question be whether the Supreme Court has properly interpreted the contract and there be no question of subsequent legislative impairment, there is no Federal question to be answered. The court is not bound to search the statutes to find one which can be construed as impairing the obligation of the charter, when no such statute is set up in the pleadings or in the opinion of the court. *Yazoo & Mississippi Railroad Co.* v. *Adams*, 41.
10. Such omission cannot be supplied by the certificate of the Chief Justice that, upon the argument of the case, the validity of the subsequent legislation was drawn in question, upon the ground of its repugnancy to the Constitution of the United States. *Ib.*
11. It is again decided that, to render a Federal question available on writ of error from a state court, it must have been raised in the cause before judgment, and cannot be claimed for the first time in a petition for rehearing. *Turner* v. *Richardson*, 87.

12. This suit was brought by the State of Missouri against the State of Illinois and the Sanitary District of Chicago. The latter is alleged to be "a public corporation, organized under the laws of the State of Illinois and located in part in the city of Chicago, and in the county of Cook, in the State of Illinois, and a citizen of the State of Illinois." The remedy sought for is an injunction restraining the defendants from receiving or permitting any sewage to be received or discharged into the artificial channel or drain constructed by the Sanitary District, under authority derived from the State of Illinois, in order to carry off and eventually discharge into the river Mississippi the sewage of Chicago, which had been previously discharged into Lake Michigan, and from permitting the same to flow through said channel or drain into the Des Plaines River, and thence into the Mississippi River. The bill alleged that the nature of the injury complained of was such that an adequate remedy could only be found in this court, at the suit of the State of Missouri. The object of the bill was to subject this public work to judicial supervision, upon the allegation that the method of its construction and maintenance will create a continuing nuisance, dangerous to the health of a neighboring State and its inhabitants, and the bill charged that the acts of the defendants, if not restrained, would result in the transportation, by artificial means, and through an unnatural channel, of large quantities of undefecated sewage daily, and of accumulated deposits in the harbor of Chicago, and in the bed of the Illinois River, which will poison the water supply of the inhabitants of Missouri, and injuriously affect that portion of the bed or soil of the Mississippi River which lies within its territory. The bill did not assail the drainage canal as an unlawful structure, nor aim to prevent its use as a waterway, but it sought relief against the pouring of sewage and filth through it by artificial arrangements into the Mississippi River, to the detriment of the State of Missouri and its inhabitants. The defendants demurred to the bill for want of jurisdiction and for reasons set forth in the demurrer. This court *held* that the demurrer could not be sustained, and required the defendants to appear and answer. *Missouri* v. *Illinois and the Sanitary District of Chicago*, 208.

13. The legislation in respect of the United States court in the Indian Territory considered, it is *held* that an appeal does not lie directly to this court from a decree of the trial court in the Indian Territory, although the suit in which the decree is rendered may have involved the constitutionality of an act of Congress. Whether an appeal lies to this court from the Court of Appeals of the Indian Territory in such cases is a question which does not arise on this record. *Ansley* v. *Ainsworth*, 253.

14. The ruling in *Western Union Telegraph Company* v. *Ann Arbor Railroad Company*, 178 U. S. 239, that when a suit does not really and substantially involve a dispute or controversy as to the effect or construction of the Constitution or laws of the United States, upon the determination of which the result depends, it is not a suit under the Constitution and laws; and that it must appear on the record, by a statement in legal and logical form, such as is required in good pleading, that the suit is one which does really and substantially involve a dispute or con-

troversy as to a right which depends on the construction of the Constitution, or some law or treaty of the United States, before jurisdiction can be maintained on this ground, is cited and followed. *Lampasas* v. *Bell*, 276.

15. The objection of the unconstitutionality of a statute must be made by one having the right to make it, not by a stranger to its grievance. *Ib.*
16. As the city of Lampasas has no legal interest in the constitutional question which it raised, and upon which it claims the right to come directly to this court from the Circuit Court under the act of March 3, 1891, c. 517, to permit it to do so would make a precedent which would lead to the destruction of the statute. *Ib.*
17. In proceedings in this court to review the action of state courts, this court does not enter into a consideration of questions of fact. *Gardner* v. *Bonestell*, 362.
18. An appeal lies directly to this court from a judgment of the District Court in a *habeas corpus* case, where the constitutionality of a law of the United States, or the validity or construction of a treaty is drawn in question. *Rice* v. *Ames*, 371.
19. The record considered, it is held that the jurisdiction of this court on a direct appeal from the Circuit Court may be maintained on the ground that the construction of a treaty made under authority of the United States was drawn in question. *Florida* v. *Furman*, 402.
20. This was a bill to remove clouds on title, and rested on appellees' alleged legal title under a Spanish grant, and cannot be sustained because the title set up was not absolutely complete and perfect prior to the treaty between the United States and Spain. As the grant needed confirmation, and had never received it, it could not be treated as constituting absolute legal title. *Ib.*
21. Even grants of land in Florida which were in fact complete and perfect prior to the ratification of the treaty might be required by Congress to have their genuineness and their extent established by proceedings in a particular manner, before they could be held valid. *Ib.*
22. Under the various acts of Congress cited, the cause of action proceeded on in this suit was barred by failure to comply with their provisions. *Ib.*
23. This appeal being from the judgment of a territorial court and no exceptions to the rulings of the court on the admission or rejection of testimony being presented for consideration, the court is limited to a determination of the question whether the facts found are sufficient to sustain the judgment rendered. *Thompson* v. *Ferry*, 484.
24. And this must be assumed to be the case as the so-called statement of facts is not in compliance with the statute. *Ib.*
25. Jurisdiction cannot be vested in this court, in a case brought here by writ of error to the court of the District of Columbia by a mere claim of the statutory amount of damages, unsupported by facts. *Magruder* v. *Armes*, 496.
26. Resort cannot be had to judicial knowledge to raise controversies not presented by the pleadings. *Mountain View Mining & Milling Co.* v. *McFadden*, 533.

B. JURISDICTION OF CIRCUIT COURTS.

1. The purpose of the proceeding in this case was to deliver from the custody of the sheriff of the parish of Jefferson, Louisiana, a person who was under sentence of death for the crime of assault with intent to commit rape, of which he was convicted. The contention of the appellee was that this was not an application for *habeas corpus*, nor for a writ of mandamus, but was an ordinary action. The appellant not only concedes the fact, but asserts it. It follows necessarily that he has no cause of action. The same result would follow if the court regarded the proceeding as one in *habeas corpus*. *Gusman* v. *Marrero*, 81.
2. When owners of lots in a city file a bill to restrain the assessment against them of the costs and expenses of improving a public street, on which the lots abut, the matter in dispute is the amount of the assessment levied, or which may be levied, against the lot or lots of each of the complainants respectively. *Wheless* v. *St. Louis*, 379.
3. And in such circumstances no distinction can be recognized between a case where the assessment has not in fact been made, and a case where it has already been made. *Ib.*
4. As neither one of these complainants will be required to pay $2000 in respect of lots involved, the decree of the Circuit Court dismissing the bill for want of jurisdiction is affirmed. *Ib.*

See ILLINOIS, LOCAL LAW OF.

C. JURISDICTION OF THE COURT OF CLAIMS.

1. Section 1088 of the Revised Statutes relates to cases in which the Court of Claims is satisfied from the evidence that some fraud, wrong or injustice has been done the United States as matter of fact, and this is so in its application to the District of Columbia under the act of June 16, 1880. *In re District of Columbia*, 250.
2. The motions for new trial involved in these cases were grounded on error of law, to correct which the remedy was by appeal. *Ib.*
3. Resort cannot be had to motions under section 1088 simply because on appeals in other similar cases it had been determined by this court that the court below had erred. *Ib.*

MORTGAGE.

1. Under the practice in Arizona the grantee of a mortgagor, who has agreed to pay the notes secured by the mortgage, may be held liable for a deficiency upon the sale of the mortgaged premises, in a direct action by the mortgagee. *Johns* v. *Wilson*, 440.
2. In such action the grantee of the original mortgagor is the party primarily liable to the mortgagee for the debt, the relation of the grantee and mortgagor toward the mortgagee, as well as between themselves, being that of principal and surety. *Ib.*
3. Where a decree of foreclosure and sale against the original mortgagor and his immediate grantee is ineffectual, by reason of the fact that, a few days before the filing of the bill, the grantee conveyed the premises to a second grantee by a deed which was withheld from the record until

after the foreclosure proceedings had been begun, a bill will lie to set aside the sale, to annul the deed upon the ground of fraud, and to decree a new foreclosure and sale of the same premises. *Ib.*

4. While it is possible that the mortgagee might have been able to obtain relief by an amended bill in the original suit, a new action is the proper remedy, where he has been mistaken in his facts, especially if such mistake has been brought about by the contrivance of the legal owners. *Ib.*

MUNICIPAL BONDS.

1. The principle reaffirmed that the recital in municipal bonds of a wrong act as authority for their being issued does not preclude a holder of such bond from showing that independently of such act there was power to issue the bonds. *Wilkes County* v. *Coler*, 506.

2. The rule reaffirmed that the question arising in a suit in a Federal court of the power of a municipal corporation under existing laws to make negotiable securities is to be determined by the law as judicially declared by the highest court of the State at the time the securities were issued, and that the rights and obligations of parties accruing under such a state of the law would not be affected by a different course of judicial decisions subsequently rendered any more than by subsequent legislation. *Ib.*

MUNICIPAL CONTRACT.

The water company was a corporation organized under general statutes of Illinois, as was also the city. In June, 1882, the government of the city gave the water company an exclusive right to supply the city with water for thirty years, reserving the right of purchasing the works erected for that purpose, and if this right were not exercised, the rights of the company were to be extended for a further term. Provision was made for the erection of hydrants by the company for which fixed rentals were to be charged, and the city was given rights in a part of them. Further provisions were made for the payment of water rates by consumers. In 1896 an ordinance was passed by the city reducing the rentals of the hydrants and rates to consumers to take effect from the date of its passage. At the time when the grant of 1882 was made, a statute passed in 1872 was in force in Illinois, authorizing cities and villages to contract with incorporated companies for a supply of water for a public use, for a period not exceeding thirty years. *Held*, that the power so conferred by the statute of 1872 in force in 1882 could, without straining, be construed as distributive; that the city council was authorized to contract with any person or corporation to construct and maintain water works at such rates as might be fixed by ordinance and for a period not exceeding thirty years; that the words "fixed by ordinance" might be construed to mean by ordinance once for all to endure during the whole period of thirty years, or by ordinance from time to time as might be deemed necessary; and that of the two constructions that must be adopted which is most favorable to the public, not that one which would so tie the hands of the council that the rates

could not be adjusted as justice to both parties might require at a particular time. *Freeport Water Company* v. *Freeport City*, 587.

NATIONAL BANK.

1. The State National Bank of Vernon, Texas, having become insolvent, Robinson was appointed receiver, and the Comptroller made an assessment upon the stock and its owners. This action was brought to recover such assessment from the Southern National Bank. One hundred and eighty shares of the stock so assessed were the property of one Curtis. His certificates were deposited with the Southern Bank as collateral, but the stock remained in his name, and so continued till the commencement of this suit. *Held*, that the case was not one in which the bank was estopped by having assumed an apparent ownership of the stock. *Robinson* v. *Southern National Bank*, 295.
2. By the mere act of bidding in this stock at a nominal price, the Southern National Bank is not to be regarded as having subjected itself to liability as the real owner thereof. *Ib.*
3. As between the Southern National Bank and Curtis and Thomas, the bank is under no legal or equitable obligation to assume or answer for the assessment made by the Comptroller on the stock. *Ib.*
4. *California Bank* v. *Kennedy*, 167 U. S. 362, and *Concord Bank* v. *Hawkins*, 147 U. S. 364, followed; but this court is not disposed, at present, to push the principle of these cases so far as to exempt such banks from liability as other shareholders, when they have accepted, and hold stock of other corporations as collateral security for money advanced (which is not decided), there is a presumption in such cases against any intention on the part of the lending bank to become an owner of the collateral shares. *Ib.*

NEW ORLEANS DRAINAGE WARRANTS.

1. The decree heretofore entered upon the mandate of this court, 175 U. S. 120, permitted of no distinction being made between drainage warrants issued for the purchase of the dredging plant of the Mexican Gulf Ship Canal Company, and such as were issued in the purchase of the franchises, and in settlement of the claim for damages urged by the Canal Company and Van Norden against the city of New Orleans. *New Orleans* v. *Warner*, 199.
2. There was no error in permitting all parties holding drainage warrants of the same class, to come in and prove their claims without formal intervention or special leave, though the validity of such warrants in the hands of their holders might be examined, except so far as such validity had been already settled by the decree. *Ib.*
3. Warrants to the amount of twenty thousand dollars issued for drainage funds collected by the city and misapplied and appropriated to the general funds of the city were also properly allowed. *Ib.*

PATENT FOR INVENTION.

1. The first three and sixth claims of reissued letters patent No. 11,167 to Fred H. Beach for a machine for attaching stays to the corners of boxes,

were not anticipated by prior devices, and are valid. *Hobbs* v. *Beach*, 383.

2. It is within the jurisdiction of the Commissioner of Patents to order a patent to be reissued to correct an obvious error in one of the drawings. *Ib.*
3. The claims of the Beach patent were not unlawfully expanded pending the litigation of interferences in the Patent Office. *Ib.*
4. A patent is not terminated by the expiration of a foreign patent for the same invention, unless such patent were obtained by the American patentee, or by his consent, connivance or authority. *Ib.*
5. The first three and sixth claims of the Beach patent *held* to be infringed by defendant, manufacturing under a patent to Horton of December, 1890. *Ib.*
6. The fact that a claim contains the words "substantially as described" does not preclude the patentee from insisting that his patent has been infringed by the use of a mechanical equivalent. These words are entitled to but little weight in determining the question of infringement, although, if a doubt arose upon the question whether an infringing machine is the mechanical equivalent of a patented device, that doubt might be resolved against the patentee, where the claims contain the words "substantially as described, or set forth." *Ib.*

PRACTICE.

The motion to dismiss this case for lack of jurisdiction must be denied, because the question was duly raised, and its Federal character cannot be disputed; but the motion to affirm is granted, because the assignments of error are frivolous and evidently taken only for delay. *Blythe* v. *Hinckley*, 333.

PUBLIC LAND.

1. The papers offered in evidence in this case, instead of showing the non-existence of special circumstances with reference to the sale to de Celis which authorized the governor to make it, affirm the existence of those circumstances, and the condition of the plaintiff in error is reduced to this dilemma: — the papers being ruled out, the validity of the grant will be implied: — the papers being ruled in, the validity of the grant will be shown. *Thompson* v. *Los Angeles Farming and Milling Co.*, 72.
2. The controlling question in this case is whether it was competent for the Secretary of the Interior upon receiving and approving of the map of the definite location of the Northern Pacific Railroad to make the order of withdrawal, stated by the court in its opinion, in respect of the odd-numbered sections of land within the indemnity limits, that is, of lands between the forty mile and fifty mile limits. In 1888 Secretary Vilas, in an elaborate opinion, held that the Northern Pacific act forbade the land department to withdraw from the operation of the preëmption and homestead laws, any lands within the indemnity limits of the grant made by the act of July 2, 1864, 13 Stat. 365, c. 217; and that, until a valid selection by the grantee was made from the lands within the indemnity limits, they were entirely open to disposition by the United

States, or to appropriation under the laws of the United States for the disposition of the public lands. *Held*, that the question could not be said to be free from doubt, but that it was the settled doctrine of the court that in case of ambiguity the judicial department will lean in favor of a construction given to a statute by the department charged with the execution of such statute, and, if such construction be acted upon for a number of years, will look with disfavor upon any sudden change, whereby parties, who have contracted with the government upon the faith of such construction may be prejudiced. *Hewitt* v. *Schultz*, 139.

3. If the question whether there has been deficiency in the grant of lands to the Northern Pacific Railroad Company was at all material in this case, no effect can be given to the certificate of Commissioner Lamoreux set out in the findings of fact. *Ib.*

4. For reasons stated in *Hewitt* v. *Schultz*, *ante*, 131, the court holds, in conformity with the long established practice in the land department, that the order of withdrawal of lands within the indemnity limits of the Northern Pacific Railroad Company is inconsistent with the true construction of the act of July 2, 1864, c. 217. *Powers* v. *Slaght*, 173.

5. It is a well settled rule of law that the power to make and correct surveys of the public lands belongs exclusively to the political department of the Government, and that the action of that department, within the scope of its authority, is unassailable in the courts except by a direct proceeding. *Gardner* v. *Bonestell*, 362.

6. The determination of the land department, in a case within its jurisdiction, of questions of fact depending on conflicting testimony is conclusive, and cannot be challenged by subsequent proceedings in the courts. *Ib.*

See JURISDICTION, A, 20, 22.

RAILROAD.

Chapter 148 of the General Laws of Minnesota for the year 1895, entitled "an act to regulate the receipt, storage and shipment of grain at elevators and warehouses on the right of way of railroads, depot grounds and other lands used in connection with such line of railway in the State of Minnesota, at stations and sidings, other than at terminal points," contained in sections 1 and 2 the following provisions: "Section 1. All elevators and warehouses in which grain is received, stored, shipped or handled and which are situated on the right of way of any railroad, depot grounds or any lands acquired or reserved by any railroad company in this State to be used in connection with its line of railway at any station or siding in this State, other than at terminal points, are hereby declared to be public elevators and shall be under the supervision and subject to the inspection of the railroad and warehouse commission of the State of Minnesota, and shall, for the purposes of this act, be known and designated as public country elevators or country warehouses. It shall be unlawful to receive, ship, store or handle any grain in any such elevator or warehouse, unless the owner or owners thereof shall have procured a license therefor from the state railroad and warehouse commission, which license shall be issued for the fee

of one (1) dollar per year, and only upon written application under oath, specifying the location of such elevator or warehouse and the name of the person, firm or corporation owning and operating such elevator or warehouse and the names of all the members of the firm or the names of all the officers of the corporation owning and operating such elevator or warehouse and all moneys received for such licenses shall be turned over to the state grain inspection fund. Such license shall confer upon the licensee full authority to operate such warehouse or elevator in accordance with the laws of this State and the rules and regulations prescribed by said commission, and every person, company or corporation receiving such license shall be held to have accepted the provisions of this act, and thereby to have agreed to comply with the same. If any elevator or warehouse is operated in violation or in disregard of the laws of this State its license shall, upon due proof of this fact, after proper hearing and notice to the licensee, be revoked by the said railroad and warehouse commission. Every such license shall expire on the thirty-first (31st) day of August of each year. Sec. 2. No person, firm or corporation shall in any manner operate such public country elevator or country warehouse without having a license as specified in the preceding section, and any attempt to operate such elevator or warehouse without such license shall be deemed a misdemeanor to be punished as hereinafter provided, and any attempt to operate such elevator or warehouse in violation of law and without having the license herein prescribed, may upon complaint of the party aggrieved, and upon complaint of the railroad and warehouse commission, be enjoined and restrained by the district court for the county in which the elevator or warehouse in question is situate, by temporary and permanent injunction, conformably to the procedure in civil actions in the district court." *Held:* (1) That the highest court of the State having decided that the provision requiring a license was separable from other provisions, it was the duty of the Federal Court to accept that interpretation of the statute; (2) that the mere requirement of a licensee to engage in the business specified in the statute was to be referred to the general power of the State to adopt such regulations as were appropriate to protect the people in the enjoyment of their relative rights and privileges, and to guard them against fraud and imposition, and is not forbidden by the Fourteenth Amendment; (3) that an acceptance of a license, in whatever form, will not require the licensee to respect or to comply with any provisions of the statute, or with any regulations prescribed by the state railroad and warehouse commission, that are repugnant to the constitution of the United States; (4) that as the statute applied to all of the class defined by its first section it was not invalid by reason of its non-application to those who own or operate warehouses *not* situated on the right of way of a railroad. Such a classification was not so unreasonable as to amount to a denial of the equal protection of the laws, nor was the requirement of a license a regulation of commerce among the States. *W. W. Cargill Co.* v. *Minnesota*, 452.

See CORPORATION, 1, 2.

STATUTE.

A. In General.

A governmental function in a statute granting powers to a municipal corporation cannot be held to have been granted away by statutory provisions which are doubtful or ambiguous. *Rogers Park Water Company* v. *Fergus*, 624.

B. Statutes of the United States.

See Constitutional Law, 2; Cuba; Federal Question, 3; Indian, 1; Jurisdiction, C; Public Land, 4.

C. Statutes of States and Territories.

Illinois *See* Jurisdiction, A, 12; Municipal Bonds.
Massachusetts. *See* Constitutional Law, 1.
Minnesota. *See* Railroad.
Mississippi. *See* Corporation, 1.
Oregon. *See* Absent Defendants, 1.

TAX AND TAXATION.

1. The city of New Orleans having collected school taxes and penalties thereon, and not having paid over these collections, judgment creditors of the school board of the city, whose claims were payable out of these taxes, were entitled, if the school board failed to require it, to file a creditor's bill against the city for an accounting. *New Orleans* v. *Fisher*, 185.
2. The city was bound to account not only for school taxes but also for the interest thereon collected by way of penalty for delay in payment. *Ib.*
3. As the collections were held in trust, the statute of limitations constituted no defense. *Ib.*
4. Jurisdiction of the actions in which the judgments were recovered against the school board could not be attacked on the creditors' bill. *Ib.*
5. No demand for an accounting as of a particular date being alleged or proven, interest on the amount found due prior to the filing of the creditors' bill is allowed only from the latter date. *Ib.*

WILL.

1. At the trial of this case before the jury, the main issue was upon the validity of the will of Adjutant General Holt. Tecumseh Sherman, a son of General Sherman, was called to prove that the signature of his mother as a witness was genuine. He was not inquired of as to the genuineness of the signature of his father, because his uncle, Senator Sherman, had testified that that signature was genuine. Subsequently Mr. Randolph testified that he was familiar with the signature of General Sherman, giving his sources of knowledge, and that he was of opinion, (giving his reasons for it,) that it was not his signature. Tecumseh Sherman was recalled to prove that the objection found to the signature of his father was not an unusual feature in his signature,

but the court, on objection, excluded the evidence. *Held*, that the evidence was competent as rebuttal, and should have been received. *Throckmorton* v. *Holt*, 552.

2. It is the general rule that if evidence which may have been taken in the course of a trial be withdrawn from the consideration of the jury by the direction of the presiding judge, such direction cures any error which may have been committed by its introduction; but there may be instances, (and the present case is one,) where such a strong impression has been made upon the minds of the jury by illegal and improper testimony, that its subsequent withdrawal will not remove the effect caused by its admission, and in that case the general objection may avail on appeal or writ of error. There may also be a defect in the language of the attempted withdrawal. In such a case, and under the particular facts in this case, the names of the witnesses should have been given, and the specific evidence which was given by them, and which was to be withdrawn, should have been pointed out. *Ib.*
3. The opinion of a witness as to the genuineness of the handwriting found in a paper, based in part upon his knowledge of the character and style of the composition and the legal and literary attainments of the individual whose handwriting it purports to be, are not competent to go to the jury upon the question raised in this case. *Ib.*
4. Declarations, either oral or written, made by a testator, either before or after the date of an alleged will, unless made near enough to the time of its execution to become part of the *res gestæ*, are not admissible as evidence in favor of or against the validity of the will. *Ib.*
5. If not admissible generally, they are inadmissible even as merely corroborative of evidence denying the genuine character of the handwriting. *Ib.*
6. No presumption of revocation of the will by the testator, or under his direction, arises from the appearance of this will when first received by the register of wills. There must be some evidence of an act by the deceased, or under his direction, sufficient to show the fact, or the instrument must have been found among the papers of the deceased, mutilated, torn or defaced, under such circumstances that the revocation might be presumed. *Ib.*
7. As the production of the will in this case created no presumption of revocation, it was necessary to prove that the act of mutilation was performed by him or by his direction, with an intention to revoke, and his declarations, not being part of the *res gestæ*, cannot be used for that purpose. *Ib.*